

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF ARKANSAS

MAY 06 2019

JAMES W. McCORMACK, CLERK

By: [Signature] DEF CLERK

JERRY SMITH

Petitioner

v.

DEWAYNE HENDRIX,
Warden, FCI Forrest City LowRespondent

(name of warden or authorized person having custody of petitioner)

Civil No. 91-cv-
Case No. Crim No. 3:11-cr-00283-SLB-HGB-
(Supplied by Clerk of Court)

2:19-cv-00051 DPM/jrk

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

This case assigned to District Judge MARSHALL
and to Magistrate Judge KEARNEY

1. (a) Your full name: Jerry Smith
- (b) Other names you have used: N/A
2. Place of confinement:
 - (a) Name of institution: FCI Forrest City Low
 - (b) Address: Federal Correctional Institution
P.O. Box 9000, Forrest City, AR 72336
 - (c) Your identification number: Reg. No. 29176-001
3. Are you currently being held on orders by:

☒ Federal authorities ☐ State authorities ☐ Other - explain:
4. Are you currently:

☐ A pretrial detainee (waiting for trial on criminal charges)

☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

 - (a) Name and location of court that sentenced you: Northern District of Alabama (Northwestern)
 - (b) Docket number of criminal case: 3:11-cr-00283-SLB-HGD-1
 - (c) Date of sentencing: 04/06/2012

☐ Being held on an immigration charge

☐ Other (explain): N/A

Decision or Action You Are Challenging

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☐ Other (*explain*): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Northern District of Alabama (Northwestern)(b) Docket number, case number, or opinion number: 3:11-cr-00283-SLB-HGD-1(c) Decision or action you are challenging (*for disciplinary proceedings, specify the penalties imposed*):Conviction and Sentence(d) Date of the decision or action: 04/30/2012**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: N/A

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: N/A

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☒ Yes ☐ No

If "Yes," provide:

(1) Name of court: Northern District of Alabama (Northwestern)

(2) Case number: 3:13-cv-08002-SLB

(3) Date of filing: 02/07/2013

(4) Result: Denied

(5) Date of result: 12/23/2014

(6) Issues raised: Smith alleged that counsel was ineffective for three reasons:

(1) for failing to appeal petitioner's case after being requested to do so by petitioner;

(2) for coercing petitioner into pleading guilty to a crime he did not commit;

(3) for refusing to seek a withdrawal of petitioner's guilty plea; and

(4) victim's recantation in an affidavit, attached as an exhibit to petitioner's Amended Memorandum, proved that the victim's previous testimony regarding petitioner's criminal conduct was false, and thus, placed petitioner's conviction into question.

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: N/A

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: § 2255 is inadequate or ineffective by satisfying the following conditions:
- (1) makes a claim of actual innocence, and
- (2) has not had an "unobstructed procedural shot" at presenting that claim.

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

_____**12. Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: N/A(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

_____**Grounds for Your Challenge in This Petition**

- 13.** State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Smith's Conviction is Unconstitutional Because He is Actually Innocent.

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

Smith's Conviction is Unconstitutional Because He is Actually Innocent.

Please see Memorandum of Law in Support.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

GROUND TWO: N/A

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☐ No

GROUND THREE: N/A

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

GROUND FOUR: N/A

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

N/A

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Smith's sentence should be vacated for resentencing. In the alternative an evidentiary hearing should be held so that Smith may further prove his meritorious ground for relief, resolve any disputed facts, and expand an incomplete record.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 4-30-19

Jerry Smith

Signature of Petitioner

Signature of Attorney or other authorized person, if any

Jerry Smith 29176-001
Federal Correctional Complex
P.O. Box 9000 (Low)
Forrest City AR 72336

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FEDERAL CORRECTIONAL INSTITUTION MEDIUM
DATE 4/30/19
THE ENCLOSED LETTER WAS PROCESSED THROUGH SPECIAL HANDLING PROCEDURES FOR FORWARDING TO YOU. THE LETTER HAS BEEN REVIEWED FOR INFORMATION OR OBJECTION. IF THE WRITER RAISES A QUESTION OR REQUEST, WHICH THIS FACILITY HAS JURISDICTION, YOU MAY WANT TO RETURN THE MATERIAL FOR FURTHER INFORMATION OR OBJECTION. IF THE WRITER REQUESTS THE ENCLOSED TO BE FORWARDED TO ANOTHER ADDRESSEE, PLEASE RETURN THE ENCLOSED TO THE ABOVE ADDRESS.

Mr. James W. McCormack
Clerk of Courts
US District Court
Eastern District of Arkansas
Jonesboro Division
615 South Main St. Rm 312
Jonesboro, AR 72401